



Category/Subject: On-the-Job Training
Colorado Policy Guidance Letter#: WIOA-2016-08, <b>Change 1</b>
Revise/Replace PGL#: WIA/WIOA-2014-01
Date: January 6, 2017
Distribution: CDLE Management/Finance, State/Local Workforce Directors & Staff, Partners

**JANUARY 2017 CHANGES HIGHLIGHTED**

**I. REFERENCE(S):**

- [Workforce Innovation and Opportunity Act \(WIOA\) of 2014](#), Pub. L. No. 113 and 128, Sections 129, 134, 181, 194.
- WIOA Department of Labor-Only Final Rule ([81 FR 56072](#), Aug. 19, 2016).
- [Training and Employment Guidance Letter \(TEGL\) 23-14: WIOA Youth Program Transition](#)
- [TEGL 03-15: Guidance on Services Provided Through the WIOA Adult, Dislocated Worker, and Wagner-Peyser Programs](#)

**II. PURPOSE:**

To provide guidance to Local Workforce Development Boards and Local Areas on the development of local policies and procedures to administer On-the-Job Training (OJT) under the WIOA Title I Adult, Dislocated Worker, and Youth programs.

**III. BACKGROUND:**

WIOA provides for a workforce system that is universally accessible and customer centered, and training that is job-driven. Work-based learning enables participants to gain skills while employed or while engaged in an experience that prepares them for permanent employment along a career pathway. OJT is a critical training service for workers who want to develop the necessary skills for a good job and for employers who need a pipeline of skilled workers to remain competitive. WIOA also encourages work experience for youth by requiring that at least 20 percent of local Youth funds be spent on summer employment opportunities, pre-apprenticeships, internships, job shadowing, and OJT.

OJT must be provided under a contract with an employer or registered apprenticeship program sponsor in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, the reimbursement may be up to 75 percent of the wage rate of the participant, with local board approval. Under WIOA, USDOL no longer grants waivers to increase the reimbursement rate.

#### IV. POLICY/ACTION:

Local Workforce Development Boards are responsible for establishing OJT policies and procedures that comply with WIOA Law and the Final Rule, and ensuring that local policies are updated to address the topics covered in this PGL. **Updated local policies should be sent via email to your Regional Liaison within 90 days of receipt of this PGL.**

##### A. Definition

OJT is defined at WIOA Sec. 3(44):

“**On-the-Job Training**” means training by an employer that is provided to a paid participant while engaged in productive work in a job that:

1. Provides knowledge or skills essential to the full and adequate performance of the job;
2. Is made available through a program that provides reimbursement to the employer of up to 50% of the wage rate of the participant (with some exceptions, see **Section E.2**), for the extraordinary costs of providing the training and additional supervision related to the training; and
3. Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

##### B. Eligibility for Training Services for Adults and Dislocated Workers

Under WIOA, there is no sequence of service requirement for career services and training services. However, training services may be provided to adults and dislocated workers only if the case manager determines, after an interview, evaluation or assessment, and case management, that the participant:

1. Is unlikely or unable to obtain or retain employment, that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services alone;
2. Is in need of training services to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and
3. Has the skills and qualifications to successfully participate in the selected program of training services.

WIOA requires that training services are linked to in-demand employment opportunities in the local area or planning region or in a geographic area in which the adult or dislocated worker is willing to commute or relocate. The selection of training services should be conducted in a manner that maximizes customer choice, is informed by the performance of relevant training providers, and coordinated to the extent possible with other grant assistance. Once eligibility for training services has been established, the case manager must then determine that an OJT is appropriate.

Training services for WIOA Title I adults and dislocated workers, when determined appropriate, must be provided either through an Individual Training Account (ITA) or through a training contract. OJT is provided through a contract.

### **C. Eligibility for Training Services for Employed Workers**

WIOA permits training services, including OJTs, for WIOA-eligible employed workers that are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by the local board in policy.

For individuals who are employed at program entry, the case manager must determine that the individual:

1. Is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment; and
2. The OJT or other training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes identified by the local board.

**NOTE:** Incumbent Worker Training is a separate type of training that will be covered in PGL WIOA-2016-09. The training eligibility described in **Sections B and C** above will not apply to incumbent workers receiving only the IW service. It will apply to incumbent workers who receive career, supportive, or training services in addition to the IW service.

When an individual is referred to a workforce center by an employer, it is the workforce center's responsibility to ensure the eligibility of the participant/trainee for both the program and training and also to assess the individual's suitability for OJT with the employer in question. The individual must not already be working for the employer unless they meet the training eligibility requirements for an employed worker.

### **D. OJTs for Youth**

WIOA prioritizes work experiences for Youth program participants by requiring that local areas spend at least 20% of local Youth program funds on work experience. Paid and unpaid work experiences that have academic and occupational education as a component are one of the 14 Youth program elements. Work experiences may include the following four categories: summer employment opportunities and other employment opportunities available throughout the school year; pre-apprenticeship programs; internships and job shadowing; and on-the-job training opportunities.

In order to participate in OJT, a youth who has been determined eligible for the program must have an objective assessment and an individual service strategy that identifies OJT as an appropriate Youth program element.

### **E. Local Policy Requirements**

Local boards are responsible for establishing policies to address the following items.

#### **1. Length of Training**

Local boards have the discretion to determine in local policy the maximum length of any OJT, as well as the criteria used to determine the length of an individual OJT up to that maximum. An OJT must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. Considerations may include the skill requirements of the occupation, the

academic and occupational skill level of the participant, prior work experience, and the participant's Individual Employment Plan (IEP). The U.S. Department of Labor's [Specific Vocational Preparation \(SVP\) levels](#) may be used as a starting point for the OJT training plan, but each training plan should be individualized. Local policy must also determine the circumstances in which an OJT participant may be employed less than full time.

## **2. Employer Reimbursement Rate**

Occupational training is provided for the WIOA participant through an OJT contract in exchange for a reimbursement to the employer, typically up to 50% of the wage rate of the participant. The reimbursement is for the extraordinary costs associated with training participants and the potentially lower productivity of the participants while in the OJT. Additionally, local boards have the flexibility to increase the reimbursement level up to 75% of the wage rate by taking into account the following factors:

- a. The characteristics of the participants (e.g. length of unemployment, current skill level, and barriers to employment);
- b. The size of the employer, with an emphasis on small businesses (the Small Business Administration's [definition of "small business"](#) which varies by industry may be used as a guide);
- c. The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and
- d. Other factors the local board may determine appropriate, e.g. the number of employees participating in the training, wage and benefit levels of the employees (both pre and post participation earnings), and relation of the training to the competitiveness of the participant.

Local policy must include the factors that will be considered to increase the reimbursement level. If "competitiveness of a participant" is identified as a factor for reimbursement by the local board, it must be defined in local policy.

## **3. Eligibility for Employed Workers**

Per **Section C.** of this PGL, WIOA permits OJT contracts for WIOA-eligible employed workers that are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment. The local board is responsible for determining the "self-sufficient wage" in local policy. The OJT must also relate to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes. The local board is also responsible for determining "other appropriate purposes" in local policy.

#### **4. Pre-Award Review**

Local policy must identify the process and procedures for a pre-award review of the employer. See **Attachment 1** for a sample pre-award checklist that may be used as a template.

The pre-award review must include:

- a. Names under which the establishment does business, including predecessors and successors in interest;
- b. The Federal Employer Identification Number (FEIN);
- c. The name, title, and address of the company official certifying the information; and
- d. Whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

The pre-award review may include:

- e. Additional information specified by the local board; and,
- f. Consultations with labor organizations and others in the affected local area(s).

#### **F. Employer Requirements**

##### **1. Contracts**

OJT must be provided through a contract with an employer or registered apprenticeship sponsor in the public, private non-profit, or private sector. The contract with the employer must ensure that participants are provided a structured training opportunity to gain the skills and competencies necessary to be successful in the occupation in which they receive training. See **Attachment 2** for a sample OJT contract that may be used as a template. The ideal OJT contract will include:

- a. the occupation, skills and competencies to be learned;
- b. the training program /curriculum for training;
- c. an outline of any separate classroom training that may be provided by the employer;
- d. the length of training time provided;
- e. the wage rate for the participant;
- f. the percentage rate used for reimbursement to the employer and the maximum amount for reimbursement;
- g. that the reimbursement is strictly for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits.
- h. the employer's agreement to maintain and make available time and attendance, payroll and other required documentation to support amounts claimed by the employer for reimbursement;
- i. assurances that training will be in accordance with WIOA Section 181 (fair and equal wages, prohibition on displacement of current employees, equal benefits and working conditions, prohibition on use of funds after relocation, collective bargaining); and
- j. assurances that training will be in accordance with the Final Rule, §680.700 – 680.730.

## **2. Employer-Employee Relationship**

OJT trainees must be regular employees of the participating employer, not independent contractors or temporary or seasonal hires.

## **3. Wage Rates**

OJT participants should be compensated at the same rates, including periodic increases, as trainees or employees in similar occupations by the same employer and who have similar training, experience, and skills, and in accordance with the Fair Labor Standards Act.

## **4. Pattern of Failure**

An OJT contract must not be written with an employer who has previously demonstrated a “pattern of failure” as defined by the local board and the Final Rule Section 680.700. Such failure may include failing to provide participants with continued long-term employment, and wages, benefits, or working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

Local procedures must include the process to remove a work site that has exhibited a pattern of failure or has not met their agreed-upon requirements for the OJT participant. These procedures should include the local process to determine the following:

- a. What constitutes an employer “exhibiting a pattern of failure”;
- b. Deficiencies or situations that occur within the OJT process;
- c. Corrective action interventions to be used; and
- d. Circumstances under which immediate termination of an agreement will occur.

## **5. Relocation**

An OJT contract may not be written until 120 days after the commencement of operations of any relocating establishment, if the relocation resulted in the loss of employment for any employee at the original location and the original location is in the United States. To verify that an establishment which is new or expanding has not relocated employment from another area, a standardized pre-award review must be conducted. This pre-award review must be conducted jointly by the local area with the establishment as a prerequisite to WIOA assistance.

## **6. Legal Use of Federal Funds**

WIOA funds may not be used to help employers to fill positions that promote or support the use, possession or distribution of marijuana.

## **7. Workplace Laws**

OJT participants shall be provided benefits (including health benefits) and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work with the same employer. Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to OJT participants, including workers’ compensation.

### **G. Coordination with Registered Apprenticeships**

An OJT contract may be developed with a Registered Apprenticeship program for training participants. OJT contracts are made with the employer, and Registered Apprenticeship generally involves both classroom and on-the-job instruction. The OJT contract may be made to support some or all of the OJT portion of the Registered Apprenticeship program. A combination of an ITA to cover the classroom instruction along with an OJT contract to cover on-the-job portions of the Registered Apprenticeship is allowed. If an apprentice is employed at the time of program enrollment, the requirements for employed workers must be followed (see **Section C**).

### **H. Coordination with Trade Adjustment Assistance (TAA)**

Co-enrollment of workers certified as eligible for TAA, in partnership with WIOA, allows for the timely provision of individualized career services and improves the effectiveness of the TAA program. Co-enrollment also may assist in making additional funds available for OJT. The TAA program allows reimbursement up to 50 percent, so for a co-enrolled TAA participant, the TAA Program may reimburse employers up to 50 percent and WIOA may reimburse employers up to an additional 25 percent, to bring the total reimbursement to employers up to 75 percent to align TAA Program benefits with WIOA benefits. The duration of an OJT for a TAA participant is limited to 104 weeks.

### **I. Eligible Training Provider Exception**

OJT providers are not required to be eligible providers on the state's Eligible Training Provider List (ETPL), and are not subject to the performance requirements for eligible providers. See **Section K.1** for employer selection requirements.

### **J. State and Local Monitoring**

OJTs will be subject to annual program monitoring, which includes a sample review of OJT contracts and case files to ensure compliance with Federal, state and local policies.

Local boards and sub-recipients (if applicable) will need to establish local monitoring procedures for OJT providers. On-site monitoring of OJT employers is required by local areas to ensure validity and propriety of the reimbursement amounts claimed by employers and to verify that the training for which the contract is written is delivered.

Local procedures must include, at a minimum:

1. Roles of the employer, participant, and workforce center representative;
2. Monitoring of OJT providers and worksites to ensure that all parties are in compliance with contract deliverables, cost, performance, and goals;
3. Employer outreach strategies and equitable selection (see **Section K.1**);
4. On-site monitoring of worksite conditions and review of employer's payroll records; and
5. Validation of skill and competency attainment for participants.

### **K. Documentation**

#### **1. Employer Selection**

Local areas must have sufficient documentation to demonstrate that participating employers were selected equitably and that a variety of employers were given sufficient opportunity to participate in OJTs. Documentation should demonstrate that a variety of employer outreach strategies were utilized to ensure that area employers are aware of OJT opportunities. Employer outreach strategies may include (but are not

limited to) newsletters, websites, forums, outreach materials, and other meetings or communications targeted to area employers. If the majority of OJT funds benefit only one employer in a local area in a given program year, this will be closely examined by the state monitoring team, and sufficient documentation must be provided to demonstrate that there was no preferential treatment given to that employer.

## **2. Payments to Employers**

Payments to employers are in compensation for the “extraordinary costs” associated with training participants. Employers are not required to document these extraordinary costs. Local boards may define what constitutes an extraordinary cost, but it is not required. Extraordinary costs are usually understood to mean more intense supervision; abnormal wear on tools; down time; and lower rates of production.

Payment to employers must be managed by an invoice system that clearly documents the number of hours worked each day by the participant and rate of pay for the time period. Invoices must be signed by both the participant and the employer or only by the employer if accompanying documentation (timesheets/time cards) is signed by the participant and reconciled to the invoice. The reimbursement is for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits. It may include time in classroom training that is part of the OJT training plan and occurs during regular work hours.

## **3. Participant Case Files**

Case files will include a copy of the OJT contract and sufficient documentation to justify the following:

- a. Demonstrated need for training to become employable, based on a detailed and comprehensive training plan to include the specific skills, databases, process, procedures and systems that the candidate will be trained on;
- b. Percentage of reimbursement to employer, based on factors established in local policy;
- c. Amount of reimbursement, based on hours worked and wage rate;
- d. Length of the OJT, based on factors established in local policy; and
- e. Notes documenting trainee’s progress, including employer progress reports, and any interventions needed to support trainee performance.

## **4. Tracking Participants in Connecting Colorado**

- a. OJT activities are tracked in Connecting Colorado using the **OJ** code.
- b. The start and end dates for the training service must match the start/end dates of the OJT.

## **L. Innovative OJT Practices Regionally and Statewide**

CDLE encourages local areas to find innovative ways to deliver OJTs, including collaborating with adjacent local areas to establish consistent policies for OJT. This is particularly important when employer and job seeker pools cross local area boundaries. Innovative, collaborative practices may address the following areas:

- 1. OJT Contracts and Forms** – streamlined contracts and paperwork offer consistency and efficiency for businesses that are operating in multiple local areas. See **Attachments 1** and **2** for sample forms.
- 2. Development of an OJT training plan** –O\*NET and/or a company job description may serve as a basis to determine occupation-specific skills.



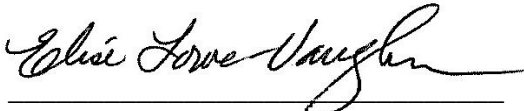
3. **Duration of an OJT training plan** – USDOL’s [SVP levels](#) may serve as a starting point but are not required.
4. **Additional items for reimbursement** – in addition to the wage reimbursement, local areas may reimburse the employer or the individual for the cost of such items as uniforms, tools, or licensing fees.
5. **Allowable costs** – agreement on what are allowable OJT costs and reimbursements, as well as the type of costs that are not allowable.
6. **Reimbursement terms** –reimbursement terms may be used to support trainee retention. For example, an OJT provider may pay an employer one-half of the OJT reimbursement at the end of the training period and upon the trainee’s successful completion of the training plan. The second half of the OJT reimbursement is made at the end of 90 days if the trainee is still employed and working 30 hours or more each week.

**V. IMPLEMENTATION DATE:**

Effective immediately. **Local OJT policies must be updated and sent to your Regional Liaison to ensure they reflect the WIOA requirements within 90 days of receipt of this PGL.**

**VI. INQUIRIES:**

Please direct all inquiries to your Regional Liaison at Workforce Development Programs.



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Elise Lowe-Vaughn, Director  
Workforce Programs, Policy, and Special Initiatives

**ATTACHMENTS:**

1. Sample Pre-Award Review Checklist
2. Sample OJT Contract